

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WILLIAM P. CHERNICOFF,

Plaintiff,

v.

C.A. NO. 04-10073 NG

**NCO FINANCIAL SYSTEMS, INC.
LOVELACE HEALTH SYSTEMS,
EQUIFAX INFORMATION SERVICES,
LLC, BIRCHWOOD CREDIT SERVICES,
INC., TRANS UNION CORPORATION,
and EXPERIAN NATIONAL
ASSISTANCE CENTER,**

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES OF EXPERIAN INFORMATION
SOLUTIONS, INC.**

NOW COMES defendant Experian Information Solutions, Inc. ("Experian"), erroneously sued herein as Experian National Assistance Center, by its undersigned counsel, and in answer to the Complaint, states as follows:

All allegations, declarations, claims or assertions of Plaintiff's Complaint that are not specifically admitted are denied.

INTRODUCTION

Experian denies, generally and specifically, each and every allegation contained therein, except to state that Experian admits that the Plaintiff purports to bring under the Fair Credit Reporting Act, ("FCRA"), 15 U.S.C. §§ 1681 et seq., and the Federal Fair Debt Collection Practices Act (FDCPA), 15 USC §§ 1692 et seq. Experian denies that it possesses any liability whatsoever to Plaintiff or that Plaintiff is entitled to damages or relief of any kind from or against Experian.

PARTIES

1. In response to paragraph 1 of the Complaint, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
2. In response to paragraph 2 of the Complaint, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
3. In response to paragraph 3 of the Complaint, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
4. In response to paragraph 4 of the Complaint, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
5. In response to paragraph 5 of the Complaint, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
6. In response to paragraph 6 of the Complaint, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
7. In response to paragraph 7 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein, except states that Experian is an Ohio

corporation, with its principal place of business in Costa Mesa, California and that it maintains offices at 475 Anton Boulevard, Costa Mesa, California 92626.

8. In response to paragraph 8 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein, except to state that Experian admits that Plaintiff has alleged subject matter jurisdiction based on the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., and the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. Experian states that this is a legal conclusion which is not subject to denial or admission.

STATEMENT OF FACTS

9. In response to paragraph 9, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
10. In response to paragraph 10, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
11. In response to paragraph 11, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
12. In response to paragraph 12, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
13. In response to paragraph 13, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
14. In response to paragraph 14, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.

15. In response to paragraph 15, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 15 of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.
16. In response to paragraph 16, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 16 of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.
17. In response to paragraph 17, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
18. In response to paragraph 18, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 18 of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.
19. In response to paragraph 19, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein. Experian also states that paragraph 19 references Exhibits "A" through "F," however, no Exhibits whatsoever were actually attached to the Complaint served upon Experian, and Experian is therefore unable to fully respond.
20. In response to paragraph 20, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
21. In response to paragraph 21 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

STATEMENT OF CLAIMS

COUNT ONE

VIOLATION OF THE FAIR CREDIT REPORTING ACT

22. In response to paragraph 22 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 23 as though fully set forth herein.
23. In response to paragraph 23, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
24. In response to paragraph 24, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 24 of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.
25. In response to paragraph 25 of the Complaint, Experian denies, generally and specifically, each and every allegation contained therein.

COUNT TWO

VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

26. In response to paragraph 26 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 25 as though fully set forth herein.
27. Paragraph 27 does not contain any allegations against Experian and therefore no response is required. To the extent a response is deemed required, Experian denies knowledge or information sufficient to form a belief as to the truth of those allegations.

COUNT THREE

VIOLATION OF M.G.L. CH. 93A

28. In response to paragraph 28 of the Complaint, Experian restates and reincorporates its responses to paragraphs 1 through 27 as though fully set forth herein.
29. Paragraph 29 does not contain any allegations against Experian and therefore no response is required. To the extent a response is deemed required, Experian denies knowledge or information sufficient to form a belief as to the truth of those allegations.
30. In response to paragraph 30 of the Complaint, Experian states that paragraph 30 contains bar legal conclusions which are not subject to denial or admission.
31. In response to paragraph 31, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 31 of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.
32. In response to paragraph 32, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein. Experian also states that paragraph 32 references Exhibits "A" through "F," however, no Exhibits whatsoever were actually attached to the Complaint served upon Experian, and Experian is therefore unable to fully respond.
33. In response to paragraph 33, Experian is without information sufficient to form a belief as to the truth of the allegations contained therein.
34. In response to paragraph 34, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 34

of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.

35. In response to paragraph 35, Experian denies, generally and specifically, each and every allegation contained therein that relates to Experian. As to the allegations in paragraph 35 of the Complaint that relate to the other defendants, Experian is without information sufficient to form a belief as to the truth of those allegations.

FIRST AFFIRMATIVE DEFENSE

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Experian and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Experian.

SECOND AFFIRMATIVE DEFENSE

All claims [or specific claims] against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

THIRD AFFIRMATIVE DEFENSE

All claims against Experian are barred because all information Experian communicated to any third person regarding Plaintiff was true.

FOURTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the result of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate [his/her] damages.

SIXTH AFFIRMATIVE DEFENSE

The Complaint and each claim for relief therein is barred by laches.

SEVENTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that any alleged damages sustained by Plaintiff was, at least in part, caused by the actions of Plaintiff himself and resulted from Plaintiff's own negligence which equaled or exceeded any alleged negligence or wrongdoing by Experian.

EIGHTH AFFIRMATIVE DEFENSE

Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

NINTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that all claims for relief [or specific claims] in the Complaint herein may be barred by the applicable statutes of limitation, including but not limited to 15 U.S.C. § 1681p.

TENTH AFFIRMATIVE DEFENSE

The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages, if any, were not caused by Experian, but by an independent intervening cause.

TWELFTH AFFIRMATIVE DEFENSE

Experian reserves the right to assert additional affirmative defenses as such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, Defendant Experian Information Solutions, Inc. prays as follows:

- (1) That Plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;
- (2) For costs of suit and attorneys' fees herein incurred; and
- (3) For such other and further relief as the Court may deem just and proper.

Dated: June 21, 2005

Respectfully submitted,

\s\Robert S. White

Robert S. White, BBO #552229

Ellen O'Connor, BBO # 651523

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-and-

Of Counsel:

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JONES DAY

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Counsel for Defendant

EXPERIAN INFORMATION SOLUTIONS, INC.

CERTIFICATE OF SERVICE

I, Ellen O'Connor, hereby certify that on June 21, 2005 a true and correct copy of
EXPERIAN INFORMATION SOLUTION, INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT was sent to:

VIA OVERNIGHT DELIVERY:

Andrew M. Fischer, Esq.
Jason & Fischer
47 Winter Street
Boston, MA 02108

Attorney for Plaintiff William Chernicoff

\s\ Ellen O'Connor

Ellen O' Connor